

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EUGENIO MENDOZA,

Petitioner,

v.

CDCR,

Respondent.

No. 1: 20-cv-00979-NONE-SKO (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO DISMISS
PETITION FOR WRIT OF HABEAS
CORPUS, DIRECTING THE CLERK OF
COURT TO ASSIGN A DISTRICT JUDGE
AND CLOSE CASE, AND DECLINING TO
ISSUE A CERTIFICATE OF
APPEALABILITY

(Doc. No. 5)

Petitioner Eugenio Mendoza, a state prisoner proceeding in *propria persona* and *in forma pauperis*, has petitioned the court for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Petitioner is serving a four-year state prison sentence after being convicted for making terrorist threats and is seeking federal habeas relief awarding him 33% in time credits against his sentence that he claims he has earned. (Doc. Nos. 1 at 3; 5 at 1, 3.) On July 16, 2020, the assigned magistrate judge found that petitioner had failed to exhaust his claim by presenting it first to the highest state court as required by 28 U.S.C. § 2254(b)(1) and, also, that petitioner had failed to name a state officer holding him in custody. (Doc. No. 5 at 2–4.) Based on these findings, the magistrate judge recommended that the petition be dismissed without prejudice. (*Id.* at 5.) Although the magistrate judge granted petitioner twenty-one (21) days to file objections to the

findings and recommendations (*id.*), petitioner has not done so.

Having reviewed the pending findings and recommendations *de novo* pursuant to 28 U.S.C. § 636 (b)(1)(C), the court finds that the magistrate judge's findings and recommendations are supported by the record and proper analysis.

In addition, the court must consider whether to issue a certificate of appealability. When a court dismisses a petition for a writ of habeas corpus, it may only issue a certificate of appealability when "the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)). In the present case, petitioner has not made the required substantial showing. The court is not persuaded that reasonable jurists would find the court's determination that petitioner is not entitled to federal habeas corpus relief wrong or debatable, or that they would conclude petitioner deserves encouragement to proceed further. The court therefore declines to issue a certificate of appealability.

Accordingly, the court orders as follows:

1. The findings and recommendations, filed on July 16, 2020 (Doc. No. 5), are ADOPTED in full;
2. The petition for writ of habeas corpus is DISMISSED WITHOUT PREJUDICE;
3. The court DECLINES to issue a certificate of appealability; and
4. The Clerk of Court is DIRECTED to assign a district judge to this case for the purpose of closing the case and then to close the case.

IT IS SO ORDERED.

Dated: September 8, 2020


UNITED STATES DISTRICT JUDGE